

Johnson Matthey (Shanghai) Chemicals Limited
Terms and Conditions of Purchase
庄信万丰(上海)化工有限公司
采购条款及条件

GENERAL. These Terms and Conditions of Purchase (“**Terms and Conditions**”) shall govern and be incorporated in every contract, arrangement or understanding between Johnson Matthey (Shanghai) Chemicals Limited (“**Purchaser**”) and Seller (“**Contract**”) for the supply of goods and/or services, as well as to the performance of works (collectively referred to as “**Goods/Services**”), pursuant to the purchase order (the “**Purchase Order**”).

总则。 本采购条款及条件 (“**条款及条件**”) 应管辖并纳入庄信万丰(上海)化工有限公司采购方与卖方之间关于采购单 (“**采购单**”) 项下的商品和/或服务的提供以及工作的履行 (合称 “**商品/服务**”) 的所有合同、安排或协定 (“**合同**”) 。

OFFER. An offer made by Seller, including an offer made without obligation, cannot be revoked after acceptance of such offer by Purchaser. A request for an offer from Seller by Purchaser is without obligation.

要约。 卖方提出的要约 (包括不附有义务的要约) 一经采购方接受即不可撤销。采购方向卖方提出的要约邀请不附有义务。

ACCEPTANCE OF PURCHASE ORDER. Acceptance of this Purchase Order is expressly limited to the terms stated herein. The applicability of any terms and condition printed on any quote, proposal, order acknowledgment, invoice or other document issued by Seller are hereby explicitly excluded. No variation of these Terms and Conditions shall be effective unless expressly accepted in writing by Purchaser. Seller's commencement of work on the Goods/Services subject to the Purchase Order, shipment of such Goods/Services, or acceptance of any payment by Purchaser, whichever occurs first, shall be deemed acceptance of the Purchase Order.

采购单的接受。 采购单的接受明确受限于本条款及条件下的规定。据此明确排除卖方发出的任何报价、提议、订单确认书、发票或其它文件的任何条款及条件的适用。对本条款及条件的任何修订必须经过采购方明确书面确认才能生效。卖方启动有关采购单下商品/服务的工作, 装运该等商品/服务或接受采购方的任何付款 (以较早者为准) 即应视为卖方对采购单的接受。

PRICE & PAYMENT. Seller shall furnish the Goods/Services called for by the Purchase Order at the price or prices stated herein; any increase in any stated price can only be accomplished through an amendment of the Purchase Order by Purchaser. The manner for payment, place of payment and currency shall be laid down in the Purchase Order and Purchaser shall pay Seller accordingly.

价格与付款。 卖方应按采购单当中的价格供应采购单下的商品/服务, 且只能通过采购方修订采购单才能提高其中规定的价格。付款方式、付款地点及货币应在采购单当中约定, 且采购方应按约定向卖方付款。

DUTIES, TAXES AND EXPENSES. The price laid down in the Contract and/or the Purchase Order shall be for delivery of the Goods/Services at a place stipulated by Purchaser and, unless otherwise agreed in writing, shall be inclusive of packaging, transport charges, insurance, duties, taxes and other delivery costs. Purchaser shall not be liable for any other costs and expenses relating to the Goods/Services unless separately stated on the Purchase Order and billed as a separate item.

关税、税项及费用。 除非另有书面约定, 合同和/或采购单规定的价格应为商品/服务交付至采购方规定地点的价格, 且包含了包装、运输费用、保险、关税、税项和其它交货成本。除采购单上单独列出并在发票上单列的项目之外, 采购方并不承担有关商品/服务的任何其它费用及开支。

SET-OFF. All claims for monies due or to become due from Purchaser shall be subject to deduction or setoff by Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller.

抵消。 对于买方向采购方索偿的所有应付或将应付的款项, 采购方均有权从中先行扣除或抵消与卖方之间的本次交易或任何其它交易产生的任何反索赔金额。

DELIVERY. Seller shall guarantee that the quality of the delivered Goods/Services is in conformance with the requirements of the Contract, as well as all safety requirements by law. Where the quality of the Goods/Services fails to meet the requirements of the Contract, Purchaser may, without prejudice to its any other rights, refuse to accept the Goods/Services. Deliveries of Goods/Services are to be made in quantities and at the time and place stipulated by Purchaser. Purchaser will have no liability to pay for Goods/Services delivered to Purchaser which are in excess of quantities specified in the Purchase Order. Overshipment of any Goods/Services shall, if so requested by Purchaser, be returned at Seller's risk and expense. Time and place of delivery are of the essence in the performance of the Contract and Purchase Order and Purchaser may terminate the relevant Contract and/or this Purchase Order if Seller fails to timely deliver the involved Goods/Services. Furthermore, in such a case, Seller undertakes to compensate Purchaser for all losses, damages and expenses so caused. Purchaser may change delivery dates or direct temporary suspension of scheduled shipments by giving two days notice in advance of shipment by the Seller.

交付。 卖方应保证所交付的商品/服务符合合同的质量要求以及法律的所有安全要求。如商品/服务的质量不符合合同要求, 采购方可以拒收该商品/服务, 且这并不损害其任何其它权利。商品/服务的交付数量以及交付时间和地点均应符合采购方的规定。采购方无须为超出采购单规定数量的商品/服务付款。如采购方要求, 任何溢装的商品/服务应予退还, 风险和费用由卖方承担。交付的时间和地点是合同及采购单履行的关键所在, 且如果卖方未能及时交付相关商品/服务, 采购方可以终止相关合同和/或采购单。此外, 在此情况下, 卖方承诺赔偿采购方因此而产生的全部损失、损害和费用。在卖方交付之前, 采购方可提前两天发出通知, 变更交付日期或要求暂停原定交付。

PACKING AND SHIPPING. All shipments must be made in accordance with specified shipping and routing instructions given by Purchaser at no additional cost to Purchaser, and Seller shall assume full responsibility for failure to comply with such instructions. All excess transportation expense incurred by Purchaser as a consequence of improper shipping or routing shall be born by the Seller or reimbursed to the Purchaser as the case may be. No charges shall be allowed the Seller for boxing, crating, packing, cartage or trucking unless provided for herein or agreed to in writing by Purchaser. Seller shall be held liable for any loss or damage incurred in transit or delivery through improper boxing, crating, packing, cartage or trucking. Where containers or packaging are to be returned to Seller, this must be clearly stated on the transport documents or invoices, and the returning shall be at Seller's risk and expense unless otherwise agreed upon in writing. Purchaser reserves the right to return all packages to Seller.

包装和运输。 所有运输必须按采购方规定的运输和路线指示进行, 并且无需采购方额外支付任何费用; 同时卖方对未能遵守此类指示的行为应承担全部责任。由于不当的运输和路线导致采购方增加的额外运输费用视情形均应由卖方承担或由卖方报销。卖方不得就打包、装箱、包装、车辆或卡车运输另行收取其它费用, 但是本条款及条件另有规定或采购方书面同意的除外。卖方对运输或交货过程中不当装箱、包装、车辆或卡车运输导致的任何损失或损害应当承担赔偿责任。若卖方要求将容器或包装物退还卖方, 则必须在运输单据或发票上明确注明, 并且退还的费用和风险均有卖方承担, 但是另有书面约定的除外。采购方保留将所有包装物退还卖方的权利。

OWNERSHIP AND RISK. Purchaser shall acquire ownership of the Goods in accordance with the provisions laid down in the Contract. Trade terms (such as CIF and FOB) will be interpreted according to Incoterms 2010 as amended from time to time. In the absence of agreement, Purchaser shall acquire ownership of the Goods and bear the risks thereof from the moment of delivery. For the avoidance of doubt, in such a case, the moment of delivery shall be deemed to take place when the Goods are loaded on Purchaser's carrier or off-loaded by Seller and placed in a place designated by Purchaser.

所有权和风险。 采购方应根据合同条款的规定获得商品的所有权。贸易条款 (如CIF和FOB) 将根据2010国际贸易术语解释通则及其不时修订的版本的規定进行解释。若无此类约定, 则采购方应自交付时起获得商品的所有权并承担相应风险。为避免歧义, 在此情形下, 卖方将商品装载至采购方运输工具或卸载于采购方指定地点时视为交付发生之时。

PURCHASER PROPERTY. All special dies, molds, jigs, tools, etc., either supplied to Seller by Purchaser or paid for by Purchaser for the performance of the Contract and/or completion of Purchase Order shall remain the property of Purchaser and shall be kept by Seller in good order with repair, ordinary wear and tear excepted.

采购方的财产。 在履行和/或完成采购单过程中, 采购方向卖方提供或采购方付费购买的所有特殊夹具、模具、钻模、工具等均为采购方所有的财产, 卖方应负责保管和维护, 但是正常损耗除外。

INSURANCE. Seller shall insure the Goods for their full value with a reputable insurance company until the moment of delivery. In the event that Seller's performance hereunder requires services by Seller's employees, to be done on Purchaser's property, Seller agrees that all such work shall be done as an independent contractor. In such circumstance, Seller shall purchase and maintain during the term of the Contract insurance (including without limitation to work-related injury insurance) providing coverage against any claim or liability that may arise from performance or work on Purchaser's property. Seller shall provide Purchaser certificates of insurance satisfactory to Purchaser evidencing the above coverage. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the services performed on Purchaser's property.

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保险。 卖方应为商品的全额价值在信誉良好的保险公司购买保险，保险期间止于货物交付之时。若卖方履行合同项下义务需要卖方员工在采购方财产上提供服务，则卖方同意实施的所有此类工作均应为独立缔约方的工作。在此情形下，卖方应购买和维持本合同有效期内的保险（包括但不限于工伤保险），该等保险应覆盖由于合同的履行或在采购方的财产上提供的工作所引起的任何索赔或责任。卖方应向采购方提供充分的保险证明，证实上述已经购买上述保险。卖方应赔偿采购方由于其在采购方财产内提供服务所引起的所有索赔或责任，并使采购方免于承担法律责任。

WARRANTIES. Seller warrants that all Goods/Services provided hereunder will (i) conform to applicable specifications, drawings, and samples; (ii) be merchantable, of good material and workmanship; (iii) free from any default or defect; (iv) be fit and sufficient for the particular purpose intended; and (v) satisfy mandatory laws and regulations regarding, inter alia, health, safety and the environment, applicable in the People's Republic of China, which for the purpose of these Terms and Conditions excludes Hong Kong and Macau Special Administrative Regions and Taiwan ("PRC") and any other country or region in which the Goods/Services are to be used if this country or region was communicated to Seller or was otherwise reasonably known to Seller. These warranties are in addition to all other warranties, express, implied or statutory. Payment for, use, inspection of, or acceptance of Goods/Services shall not constitute a waiver of any breach of warranty.

保证。 卖方保证根据合同提供的所有商品/服务均应（1）与适用的规格、图纸和样品相符；（2）具有适销性，并且材料和工艺完善；（3）不存在任何缺陷或瑕疵；（4）适合并足够用于实现预期的特定目的；及（5）符合中华人民共和国（简称为“中国”）境内强制性法律和法规，尤其是关于健康、安全和环境方面法律和法规的规定，并且，若卖方被告知或卖方以其它合理方式知悉商品/服务将被使用于任何其他国家和地区，则应符合该等国家或地区的此类法律规定。就本条款及条件而言，中华人民共和国不含香港和澳门特别行政区及台湾地区。本条规定的保证不影响任何其它明示、默示或法定的保证。付款、使用、验收或接受商品/服务并不构成放弃对任何担保的违反追究责任。

ACCEPTANCE OF GOODS/SERVICES. The Goods/Services are subject to inspection and testing by Purchaser. In the event that the Goods/Services are delivered in breach of the above warranties or found defective (whether the defect is patent or latent), Purchaser has the right to replace or repair such Goods/Services at the expense of the Seller within a reasonable period of time determined by Purchaser or reject and return such Goods/Services at all times at the expense and risk of Seller. Purchaser has the right to make such supplements, replacements or repairs itself, or to instruct a third party to do so, at Seller's expense, if the Goods/Services are required without delay or if Seller fails to supplement, repair or replace the Goods/Services within a reasonable a period of time as stipulated by Purchaser. The making of any payment shall not prejudice Purchaser's rights hereunder.

商品/服务的验收。 商品/服务应接受采购方的验收和测试。若交付的商品/服务违反以上保证或存在缺陷（无论明显或潜在缺陷），则采购方有权要求卖方在采购方决定的合理期间内更换或修理此类商品/服务并承担费用，或在任何时候拒收和退还商品/服务，且退货费用和风险均由卖方承担。若商品/服务需要立即进行增加、更换或修理，或卖方未能在采购方规定的合理期间内增加、更换或修理此类商品/服务，采购方有权自行实施增加、更换或修理，或安排第三方实施此类增加、更换或修理，但是费用由卖方承担。支付任何款项不得影响采购方根据本条规定享有的权利。

LIABILITY AND INDEMNIFICATION. If Seller breaches the Contract, it shall pay damages to Purchaser for all losses that has been foreseen or ought to be foreseen when Seller enters into the Contract. If the damages are not sufficient to cover the losses incurred by Purchaser, Purchaser shall be entitled to other remedies available under applicable law. If Purchaser demands continued performance of the Contract, Seller shall continue to perform. Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in or breach of warranty for the Goods/Services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL PURCHASER BE LIABLE TO SELLER FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES (INCLUDING INTEREST OF DELAYED PAYMENT, PENALTIES, TAXES OR FILING FEES) OR LOST PROFITS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE LIKELIHOOD OF SUCH DAMAGE.

责任和赔偿。 若卖方违反本协议的规定，则其应赔偿采购方在签署本合同时可以预见或应当预见的采购方的所有损失。若损害赔偿不足以弥补采购方产生的损失，则采购方有权享有适用法律规定的其它救济。若采购方要求继续履行合同，则卖方应继续履行合同。对由于合同项下采购的商品/服务违反任何保证或存在任何缺陷，或由于卖方及其代理人、员工或分包商的任何作为或不作为，以任何方式引起或导致的所有损失、索赔或责任和费用（包括律师费），卖方应为采购方提供抗辩和赔偿，并使其免于遭受损失。在法律允许的范围内，采购方在任何情况下不对卖方发生的任何从属损害、附带损害、间接损失、特殊损害或惩罚性损害（包括逾期付款的违约金/利息、罚款、税收或手续费）、利润损失等承担责任，无论该等责任基于违约、侵权、严格责任或其他，即使采购方已被告知该等损失可能发生。

INTELLECTUAL PROPERTY. Seller warrants that the sale or use of the Goods/Services will not infringe any patent, trademark, copyright, model or other intellectual property right, and Seller agrees to indemnify, save harmless, and defend Purchaser, at Seller's cost, from all loss and liability, including claims for profits, by reason of any actual or alleged infringement by Purchaser or persons selling or using Purchaser's products, of any patent, trademark, copyright, model or other intellectual property right applicable to the use or sale of the Goods/Services provided hereunder.

知识产权。 卖方保证，商品/服务的出售或使用不会侵犯任何专利、商标、版权、实用新型或其它知识产权。对于因为采购方或销售或使用采购方产品的人士实际或被诉侵犯适用于本条款及条件项下商品/服务的使用或销售的任何专利、商标、版权、实用新型或其它知识产权而使采购方蒙受的所有损失和责任（包括利润索赔），卖方同意自行承担费用赔偿采购方，为采购方辩护并保证采购方不受损害。

CONFIDENTIAL INFORMATION. Subject to any non-disclosure agreement separately entered into between Purchaser and Seller regarding the sale of the Goods/Services, Seller agrees that (i) all material, knowledge and information, including without limitation to specifications, drawings, sketches, calculations, formulas, preparation methods, studies, samples, models, molds, dies and tools made available by Purchaser or produced or developed by Seller on the instructions of Purchaser in relation to this Purchase Order (hereinafter collectively referred to as "Confidential Information"), shall be treated as confidential and proprietary belonging to Purchaser, and are furnished under the express understanding that such material may not, in whole or in part, be disclosed to any other person or used for any purpose (including without limitation to application for patents) other than performing the Contract, without the prior written consent of Purchaser; (ii) Seller undertakes to impose the same obligations on any employees and third parties which obtain Confidential Information as required for the performance of the Contract and warrants that such employees and third parties will comply with such obligations; and (iii) all documents and materials containing Confidential Information, together with any copies and the like which have been produced, are to be returned in good condition to Purchaser at Seller's expense upon request or upon termination of the Contract, whichever is earlier.

保密信息。 受限在于采购方与卖方之间就商品/服务的销售另行订立的任何保密协议，卖方同意：(i) 采购方提供的或卖方按采购方的指示形成或开发的有关采购单的所有资料、知识和信息，包括但不限于规格、图纸、草图、计算、配方、制备方法、研究报告、样品、模型、模具和工具（以下合称“保密信息”）应视作采购方的保密及专有信息，且保密信息的提供是基于以下明确的约定：未经采购方的事先书面同意，该等资料不得全部或部分披露予任何其他人士或用于履行合同之外的任何目的（包括但不限于申请专利）；(ii) 卖方承诺对在合同履行需要的情况下获得保密信息的任何员工和第三方施予相同的义务，并保证该等员工和第三方遵守相关义务；且(iii) 所有包含保密信息的文件和资料以及已经制作的任何副本或类似文件须在采购方要求或合同终止之时（以较早者为准）以良好的状态归还采购方，费用由卖方承担。

FORCE MAJEURE. Purchaser may delay delivery or acceptance occasioned by causes reasonably beyond its control. Seller shall hold such Goods/Services at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed.

不可抗力。 采购方可以因为其无法合理控制的情形而推迟交付或接收时间。卖方应按采购方的指示持有相关商品/服务，并在导致推迟的原因消除之时交付。

TERMINATION FOR CONVENIENCE. Purchaser reserves the right to terminate the Contract or any part hereof for its sole convenience. In such event Seller shall immediately stop all work. Seller shall be paid a reasonable termination charge consisting of a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after notice of termination, nor for any costs incurred by Seller which could reasonably have been avoided.

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为了便利而终止。 采购方保留为了自身便利而终止合同或其任何部分的权利。在此情况下，卖方应立即停止所有工作。卖方应获得合理的解约金，其金额等于按照在终止通知之前已经完工的比例计算的价款加上该终止导致的实际直接成本。卖方不会因为终止通知之后的任何工作或者卖方产生的原本可以合理避免的任何费用获得付款。

TERMINATION FOR CAUSE. Purchaser may terminate the Contract or any part hereof for cause in the event of (i) any default by Seller or Seller's failure to comply with these Terms and Conditions; (ii) Seller being declared bankrupt, files a petition for bankruptcy or requests the granting of suspension of payments; or (iii) Seller being subject to similar measures in the jurisdiction under which Seller is organized.

因故终止。 在以下情况下，采购方可以终止合同或其任何部分：(i) 卖方违约，或卖方未遵守本条款及条件的规定；(ii) 卖方被宣告破产，提交了破产申请，或请求暂停付款；或 (iii) 卖方在其注册所在的辖区被采取了类似的措施。

ENTIRE AGREEMENT AND MODIFICATION. The Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. Neither the Contract nor the Purchase Order may be modified orally. Any modification must be in writing signed by Purchaser.

完整协议和修订。 采购单以及本条款及条件中提及的任何文件构成双方之间的完整协议。合同及采购方不能口头修订。任何修订均必须以书面形式作出并经过采购方签署。

SEVERANCE. The invalidity or unenforceability for any reason of any part of these Terms and Conditions shall not prejudice or affect the validity or enforceability of the remainder.

可分割性。 如本条款及条件的任何部分出于任何原因无效或不可强制执行，其余部分的有效性或可执行性不应受到损害或影响。

WAIVER. Purchaser's failure to insist on performance of any of these Terms and Conditions or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

弃权。 采购方未能坚持要求履行本条款及条件或行使任何权利或特权或采购方对本条款及条件项下的任何违约放弃追究责任并不构成此后对相同或类似类型的的任何其它条款、条件或特权的放弃。

ASSIGNMENTS AND SUBCONTRACTING. No part of the Contract may be assigned or subcontracted without prior written consent of Purchaser.

转让及分包。 未经采购方的事先书面同意，合同的任何部分均不得转让或分包。

COMPLIANCE WITH LAWS. Seller's performance of the Contract shall comply with all applicable laws, and with all rulings, regulations, interpretations, and governmental orders issued thereunder.

符合法律。 卖方履行合同应符合所有适用法律以及依据其颁布的所有判决、法规、解释和政府命令的规定。

ANTI-CORRUPTION AND BRIBERY. Seller will not in connection with the Contract or the sales of Goods/Services or to be sold under it, offer, pay, promise to pay, or authorize the giving of any financial or other benefit to any person for the purpose of obtaining an improper advantage, or otherwise conduct itself in a manner contrary to the applicable PRC anti-bribery laws and regulations, the UK Bribery Act or the U.S. FCPA. Purchaser may terminate the Contract immediately upon written notice where Seller is found to have breached this clause, and Seller shall indemnify Purchaser from all damages, penalties, fines and/or costs of any kind arising from, or relating to, any such breach.

反腐败及贿赂。 关于合同或其项下的商品/服务的销售，卖方不会为了取得不当利益向任何人士提供、支付、承诺支付或授权给予任何财务利益或其它利益，或以其它有违适用的中国反贿赂法律法规、英国反贿赂法或美国反海外贿赂法的方式行事。如卖方被发现违反了本条的规定，采购方可向卖方发出书面通知立即终止合同，且卖方应向采购方赔偿此类违约导致的或与之有关的所有损害赔偿、违约金、罚款和/或成本。

GOVERNING LAWS. The Contract shall be governed by and construed according to the laws of the PRC, excluding expressly, the United Nations Convention on Contracts for the International Sale of Goods.

管辖法律。 合同应受中华人民共和国法律管辖并依其进行解释，并明确排除《联合国国际货物销售合同公约》的适用。

DISPUTE RESOLUTION. Any dispute arising out of or in connection with the Contract including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration conducted under the auspices of Shanghai International Economic and Trade Arbitration Commission in Shanghai in accordance with its rules prevailing at the time of application. The arbitral award shall be final and binding upon the Parties. The losing party shall bear the arbitration costs unless otherwise ruled by the arbitration tribunal.

争议的解决。 合同引起的或与之有关的任何争议，包括有关其存在、有效性或终止的任何问题，应提交上海国际经济贸易仲裁委员会，根据申请仲裁之时有效的规则在上海通过仲裁最终解决。仲裁裁决应为最终裁决并对双方具有约束力。仲裁费用应由败诉方承担，仲裁庭另行裁定的除外。

HEADINGS. Headings to paragraphs are for convenience of reference only and shall not affect the interpretation of these Terms and Conditions.

标题。 条款标题仅为方便阅读，并不影响本条款及条件的诠释。

LANGUAGE. Should these Terms and Conditions be in both versions of English and Chinese, the English version shall prevail.

语言。 如本条款及条件存在英语和中文两个版本，以英语版本为准。